

REMARKS

Claims 1-10, 14-19, and 30-37 were examined in the present Application. Claims 1-4, 8, 10, 14, 15, 31, 32, 34, 36 and 37 have been amended herewith. In view of the foregoing amendments and following remarks, the Applicants respectfully request reconsideration of the rejection and allowance of the Application.

Amendments to the Claims

Without conceding to the Examiner's rejections and for the purpose of expediting prosecution, Applicants have amended independent claims 1, 14, 34, 36, and 37, and dependent claims 2-4, 8, 10, 15, 31, and 32.

As amended, independent claim 1 includes "checking the availability of specified content from content sources including other clients and content servers in the peer-to-peer network, wherein the availability of the specified content is identified in a list of available content, the list provided to clients in the peer-to-peer network, and wherein the list of available content is periodically updated to reflect a current availability of content from the content sources; and retrieving the specified content in parallel from multiple content sources, wherein the specified content is retrieved from one or more of the other clients in the peer-to-peer network when the specified content is available from one or more of the other clients in the peer-to-peer network as identified by the list of available content, and the specified content is retrieved from one or more of the content servers in the peer-to-peer network either when the specified content is not identified on the list of available content or to satisfy a delivery guarantee of the specified content." Independent claims 14, 34, 36, and 37 have been amended in a similar, albeit contextually appropriate, manner as claim 1.

The amendments to exemplar claim 1 are supported, at least, by paragraph [0055] of the published application, which states that “[d]ifferent packets belonging to the same file can be retrieved from different peers.” Additionally, paragraph [0066] discloses that “[t]he packets are downloaded in parallel from multiple peer client stations on the list obtained from content broker 214.” Also, as set forth in paragraph [0056], “one or more of content servers 212 remain as a fallback from which to request content when peers do not have the content or are busy or unavailable ... [such that] service guarantees are preserved regardless of the peer-to-peer network status.” Moreover, paragraph [0011] states that “[t]he distribution system assures reliability and quality of service in delivery of timely content.”

Dependent claims 2-4, 8, 10, 15, 31, and 32 are amended for consistency with the claim from which they depend and/or to address informalities.

The Applicants reserve the right to pursue any or all of the original claims at a later time, either within the present Application or in future application(s). The Applicants do not believe any new matter has been introduced by these amendments.

Objections to the Claims

The Examiner asserts that claim 8 is objected to because of an informality. *Office Action*, 2. The Applicants believe the informality has been appropriately corrected by the above-mentioned claim amendments, and thus respectfully request that the objection be withdrawn.

Rejections under 35 U.S.C. § 103

The Examiner asserts that claims 1, 2, 5-10, 14, 15, 36, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2002/0198930 (*Jones*) in view of U.S. Pub. No. 2002/0046232 (*Adams*). *Office Action*, 3.

Claims 1, 2, 5-10, 14, 15, 36, and 37

Independent claim 1, as amended, includes “retrieving the specified content in parallel from multiple content sources,” which include other clients and content servers in the peer-to-peer network. Specified content is downloaded from one or more clients when available. Specified content is downloaded from content servers when the specified content is not available from the clients or to satisfy a delivery guarantee of the specified content.

Contrastingly, *Jones* is directed to “offloading of demands on master servers to other nearby clients which are downloading the same content.” *Jones*, [0006]. For example, if “650 clients attempt to download the same 650-MB file at the same time from the same master server ... [then the] first 65 machines connect to the master server and receive a piece of the file and share it with at least ten other client machines ... [such that] the master server only has to deal with 65 downloads.” *Jones*, [0033]. If a particular client goes down, “[t]he master server will then redirect the clients [downloading from that particular client] to another peer-to-peer server, or turn the clients into peer-to-peer servers themselves.” *Jones*, [0034]. Client downloads are performed serially in that a given client downloads from a single source at a time, even though that source can change mid-download. Furthermore, *Jones* does not teach or suggest guarantees of delivery for client downloads.

Adams, on the other hand, is directed to “allowing a user to search for and locate a file in a distributed file sharing computer network.” *Adams*, [0015]. Client downloads are performed serially in that “[t]he client terminal ... issuing the search can retrieve a file ... from the search results by requesting it from one of the client terminals ... specified in the search results.” *Adams*, [0037] (emphasis added). In addition, *Adams* fails to teach or suggest guarantees of delivery for client downloads.

Both *Jones* and *Adams* teach serial download of data by clients from a single source at a given time, either explicitly or implicitly. A *prima facie* case of obviousness can be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997). Since claim 1 sets forth “retrieving the specified content in parallel from multiple content sources,” the Applicants contend that *Jones* and *Adams* both teach away from the claimed invention.

Additionally, the Applicants respectfully note that in order “[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Amended claim 1 sets forth that “the specified content is retrieved from one or more of the content servers in the peer-to-peer network ... to satisfy a delivery guarantee of the specified content.” As neither *Jones* nor *Adams* teach delivery guarantees, *Jones* and *Adams* fail to expressly or impliedly suggest the claimed invention.

Based at least on the remarks herein, the Applicants believe that independent claim 1 is patentable over the cited references. Additionally, as independent claims 14, 36, and 37 include similar elements to those of independent claim 1, claims 14, 36, and 37 are likewise patentable for at least the same reasons. Furthermore, if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is

nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). As such, dependent claims 2, 5-10, and 15 are allowable for at least the same reasons as the independent claim from which they depend.

Claims 3, 4, 16-18, and 30-35

The Examiner asserts that claims 3 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, further in view of U.S. Pat. No. 5,341,477 (*Pitkin*), and still further in view of U.S. Pat. No. 7,320,131 (*O'Toole*). *Office Action*, 7. The Examiner further asserts that claims 4 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, and further in view of U.S. Pat. No. 6,173,322 (*Hu*). *Office Action*, 9. In addition, the Examiner asserts that claims 30-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, and further in view of U.S. Pub. No. 2005/0021398 (*McCleskey*). *Office Action*, 10. The Examiner also asserts that claim 18 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, and further in view of U.S. Pub. No. 2002/0116479 (*Ishida*). *Office Action*, 11. Furthermore, the Examiner asserts that claim 35 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, further in view of *McCleskey*, and still further in view of *Hu*. *Office Action*, 11. The Applicants respectfully traverse the § 103 rejection of claims 3, 4, 16-18, and 30-35.

The Applicants respectfully disagree with the Examiner's rejection of independent claim 34 in that claim 34, as amended, includes similar elements to those of claim 1. Since *McCleskey* does not make up for the teachings that lack from *Jones* in view of *Adams*, claim 34 is likewise patentable for at least the same reasons as claim 1.

The Applicants respectfully disagree with the Examiner's rejection of claims 3, 4, 16-18, 30-33, and 35, in that claims 3, 4, 16-18, 30-33, and 35 depend from otherwise allowable claims as discussed in detail herein. "A claim in dependent form shall be construed to

incorporate by reference all the limitations of the claim to which it refers.” 35 U.S.C. § 112 ¶ 4. As *Pitkin*, *O’Toole*, *Hu*, *Ishida*, and *McCleskey* do not overcome the absent teachings of *Jones* in view of *Adams*, the Applicants contend that dependent claims 3, 4, 16-18, 30-33, and 35 are allowable over the cited references for at least the same reasons as the independent claim from which they depend.

CONCLUSION

The rejection under 35 U.S.C § 103(a) of claims 1-10, 14-18, and 30-37 is overcome, at least, because the cited references teach away from the claimed invention, and fail to teach or make obvious each and every claimed element.

Based on the foregoing amendments and remarks, the Applicants believe the rejection to the claims has been overcome and that the present Application is in condition for allowance. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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